

Federal Court



Cour fédérale

Date: 20231129

**Dockets: IMM-9599-22
IMM-9600-22
IMM-9639-22**

Citation: 2023 CF 1595

[ENGLISH TRANSLATION]

Ottawa, Ontario, November 29, 2023

PRESENT: Madam Justice Walker

BETWEEN:

**TSAGUE LEKEUKA BENI-AROLD
TSAGUE ZANGUIM MURIELLE GRÂCE
TSAGUE DONGMO LYNN-JOYCE**

Applicants

and

**MINISTER OF CITIZENSHIP
AND IMMIGRATION**

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The applicants, who are minor brothers and sisters, are citizens of Cameroon, where they currently reside. Their father (the sponsor), Mr. Lekeuka, has been a resident of Canada since

2020. When he applied for permanent resident status in Canada in the skilled worker program, Mr. Lekeuka did not declare the three applicants.

[2] On September 10, 2021, Mr. Lekeuka filed an application to sponsor the applicants as members in the family class (APR-Family Class). To support his application, Mr. Lekeuka submitted a letter of explanation (the Explanatory Letter) in which he states that the applicants were born from an extramarital relationship. At first, the applicants' Cameroonian mother objected to including the children in Mr. Lekeuka's immigration plans. However, she does not currently object to the sponsorship because she is having difficulty raising the applicants and meeting their needs. Mr. Lekeuka states in the Explanatory Letter that the applicants [TRANSLATION] "are left to their own devices and live in very difficult conditions".

[3] On August 25, 2022, an immigration officer of the Embassy of Canada in Dakar (the Officer) refused the applicants' application for permanent residence visas (APR-Family Class) pursuant to paragraph 117(9)(d) of the *Immigration and Refugee Protection Regulations*, SOR/2002-227 (IRPR). The officer also determined that the humanitarian and compassionate considerations did not justify an exemption from the requirements of paragraph 117(9)(d), pursuant to subsection 25(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 (IRPA).

[4] The applicants are now requesting judicial review of the Officer's three decisions (the Decisions). They claim that the Officer breached her duty to act fairly by refusing their visa applications, and that the Decisions are unreasonable.

[5] In 2022, the Court ordered that the applicants' applications for judicial review (IMM-9599-22, IMM-9600-22 and IMM-9639-22) be heard together, and the hearing for the applications was assigned to me. These reasons and judgment address all the applications.

[6] For the reasons that follow, the applicants' applications for judicial review will be allowed. After having examined the Officer's reasons, the evidence on record and the applicable law, I am of the opinion that, in the circumstances, the Decisions do not comply with the rules of procedural fairness. Given this conclusion, it is not necessary for me to address the other arguments raised by the applicants to challenge the reasonableness of the Decisions.

II. Analysis

[7] The applicants submit that the purpose of Mr. Lekeuka's Explanatory Letter was not to make an application under section 25 of the IRPA on humanitarian and compassionate grounds. They acknowledge that the Explanatory Letter addresses several aspects of their lives. However, by reason of their right to family reunification, the applicants claim that the Officer should have granted them, by means of a procedural fairness letter, the opportunity to file submissions and detailed evidence describing their living conditions in Cameroon.

[8] Procedural fairness issues are not truly decided on a particular standard of review. The role of a reviewing court is instead to determine whether the procedure was fair having regard to all of the circumstances (*Canadian Pacific Railway Company v Canada (Attorney General)* 2018 FCA 69 at para 54 (*CPR*)). The Federal Court of Appeal noted that "the ultimate question

remains whether the applicant knew the case to meet and had a full and fair chance to respond” (*CPR* at para 56).

[9] The respondent submits that, for the Officer, the Explanatory Letter was equivalent to a request for exemption, on humanitarian and compassionate grounds, from the exclusion set out in paragraph 117(9)(d) of the IRPR. I agree. However, I am satisfied that Mr. Lekeuka was not requesting discretionary exemption on humanitarian and compassionate considerations when the Explanatory Letter was filed.

[10] In the Explanatory Letter, Mr. Lekeuka describes the circumstances surrounding the applicants’ births and their mother’s initial refusal to include the applicants in their father’s permanent residence application. He clarifies that the mother has now withdrawn her objection and that she complains about caring for the children to the point that she has relinquished custody of two of the applicants to Mr. Lekeuka’s older sister in Cameroon.

[11] Mr. Lekeuka states that the Explanatory Letter [TRANSLATION] “aims to explain why there is no mention” of the applicants in his own immigration file. He definitely describes certain difficult living conditions facing the applicants in Cameroon, but his main objective in filing the Explanatory Letter was to explain why he failed to declare the applicants in his application for permanent residence in Canada.

[12] After carefully considering the content and purpose of the Explanatory Letter, the Decisions, and the serious consequences that these entail, I find that the applicants’ rights to

procedural fairness were violated during the Officer's decision-making process. Faced with a clearly ambiguous letter, she had an obligation to be more transparent over the course of her assessment. To this end, the Officer should have sent a procedural fairness letter to Mr. Lekeuka before initiating an assessment of the humanitarian and compassionate considerations. This breach of procedural fairness considerably harmed the applicants' right to make their case.

[13] The applications for judicial review are therefore allowed and the Decisions are set aside. It is essential that the applicants, and Mr. Lekeuka, be afforded the opportunity to fully present their case to a new immigration officer.

[14] No questions for certification were proposed by the parties, and I agree that there are none.

JUDGMENT in IMM-9599-22, IMM-9600-22 and IMM-9639-22

THIS COURT’S JUDGMENT is as follows:

1. The applications for judicial review are allowed.
2. The applicants’ applications for permanent resident visas are remitted to a different immigration officer for redetermination.
3. A copy of this Judgment and Reasons will be placed on each of the following Court files: IMM-9599-22, IMM-9600-22 and IMM-9639-22.
4. No question of general importance is certified.

“Elizabeth Walker”

Judge

Certified true translation
Michael Palles

FEDERAL COURT
SOLICITORS OF RECORD

DOCKETS: IMM-9599-22, IMM-9600-22, IMM-9639-22

STYLE OF CAUSE: TSAGUE LEKEUKA BENI-AROLD, TSAGUE
ZANGUIM MURIELLE GRÂCE, TSAGUE
DONGMO LYNN-JOYCE v MINISTER OF
CITIZENSHIP AND IMMIGRATION

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: OCTOBER 10, 2023

JUDGMENT AND REASONS: WALKER J

DATED: NOVEMBER 29, 2023

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